CLERK'S COPY

TRANSCRIPT OF RECORD

Pat 166 85796 21.8.8 C.

Supreme Court of the United States

OCTOBER TERM, 1937

No. 6

D. W. McEACHERN, ADMINISTRATOR OF THE ESTATE OF S. C. McEACHERN, DECEASED, PETITIONER,

vs.

J. T. ROSE, FORMER COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 23, 1937.

CERTIORARI GRANTED APRIL 5, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 6

D. W. McEACHERN, ADMINISTRATOR OF THE ESTATE OF S. C. McEACHERN, DECEASED, PETITIONER,

vs.

J. T. ROSE, FORMER COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Fifth Circuit	a	1
Caption (omitted in printing)	a	
Record from D. C. U. S., Northern Georgia	1	1
Petition	1	1
Exhibit "A"—Contract for sale of stock, September 3, 1924	16	13
Answer	19	15
Motion for directed verdict	30	24
Verdict	31	25
Judgment	32	25
Bill of exceptions	32	25
Caption	32	26
Offers in evidence:		
Income tax return for 1929	33	26
Income tax return for 1930	38	30
Income tax return for 1931	43	34
Amended income tax return for 1931	48	37
Plaintiff's Exhibit 4—Stipulation as to certain facts	51	39

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 26, 1937.

	Original	Print
Record from D. C. U. S., Northern Georgia—Continued.		
Bill of Exceptions—Continued.		
Objections to stipulation	59	45
Defendant's Exhibit "A"—Stipulation as to certain facts	60	46
Objections to stipulation	62	47
Colloquy	65	50
Motions for directed verdict	66	51
Ruling on motions for directed verdict	67	51
Order overruling motion for new trial	67	51
Stipulation as to bill of exceptions	68	52
Order settling bill of exceptions	68	52
Petition for appeal	69	53
Order granting appeal	70	53
Assignments of error	71	54
Præcipe for transcript of record	73	56
Clerk's certificate (omitted in printing)	75	
Recital as to citation	75	56
Minute entry of argument and submission	76	57
Opinion, Hutcheson, J.	77	57
Judgment	84	62
Motion for stay of mandate	85	63
Order staying issuance of mandate	86	63
Motion for further stay of mandate	87	64
Order further staying issuance of mandate	89	65
Clerk's certificate	90	66
Order extending time within which to apply for writ of certiorari	91	67
Order allowing certiorari	92	67

[fol. a] [Caption omitted]

[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

At Law. No. 1799

D. W. McEachern, Administrator of the Estate of S. C. McEachern, Deceased,

vs.

J. T. Rose, Former Collector of Internal Revenue

Petition—Filed September 11, 1934

To the District Court of the United States for the Northern District of Georgia, Atlanta Division:

The petition of D. W. McEachern, Administrator of the Estate of S. C. McEachern, deceased, Plaintiff, names J. T. Rose, former Collector of Internal Revenue as Defendant herein, and respectfully shows to this Honorable Court:

First Count

1

S. C. McEachern died, intestate, on December 12, 1928, a resident of Cobb County, Georgia. On February 4, 1929, the Ordinary of Cobb County, Georgia, granted letters tes-
[fol. 2] tamentary upon the Estate of said S. C. McEachern to D. W. McEachern, and on the same day said D. W. McEachern qualified as Administrator of the Estate of S. C. McEachern, deceased.

2

Defendant, J. T. Rose, is a citizen of the State of Georgia and is a resident and inhabitant of Fulton County in the Atlanta Division of the Northern District of Georgia, and during the period from December 5, 1921, to June 19, 1933, said Defendant was Collector of Internal Revenue of the United States for the District of Georgia, in which collection district the Plaintiff resides and the Estate of S. C. McEachern is being administered.

3

This is a suit of a civil nature arising under the internal revenue laws of the United States, and in particular the Revenue Act of 1928, being the Act of May 29, 1928, Chapter 852, 45 Stat. 795.

4

The Defendant is indebted to the Plaintiff in the principal sum of $230.07 with interest thereon at six per cent per annum from December 11, 1930, by reason of the facts set forth in the following paragraphs.

5

During the month of March, 1930, the Commissioner of Internal Revenue assessed against the Estate of S. C. McEachern income taxes for the calendar year 1929, in the sum of $924.96.

6

Defendant collected from Plaintiff the full amount of said assessment in the following installments, on the dates indicated:

[fol. 3] $231.01 on March 15, 1930.
231.94 on June 12, 1930.
231.94 on September 15, 1930.
230.07 on December 11, 1930.

7

The only items of gross income as defined in Section 22 of the Revenue Act of 1928 received by or on behalf of said Estate of S. C. McEachern in the year 1929 were (a) an item of rents received and (b) an item of gain derived upon the collection of certain installments of the selling price of stock in the Industrial Life & Health Insurance Company, both of which items will be more fully described below.

8

The item of rents referred to in the preceding paragraph amounted to $247.70.

9

The installments of the selling price of stock in Industrial Life & Health Insurance Company referred to in Paragraph

7 were received by the Estate of S. C. McEachern in the year 1929 in the sum of $26,250.00, pursuant to a contract for the sale of 500 shares of said stock, which the said S. C. McEachern, Plaintiff's intestate, had entered into on September 3, 1924. A copy of said contract is attached hereto and made a part hereof, marked Exhibit A.

10

Under said contract of sale (Exhibit A), the said S. C. McEachern undertook to sell said 500 shares of stock in Industrial Life & Health Insurance Company for a total consideration of $300,000.00, payable $30,000.00 in cash at the time of said contract and the balance in installments of $7,500.00, the first being due March 1, 1925, and the other installments being due every three months thereafter.

[fol. 4]

11

At the time of the death of said S. C. McEachern on December 11, 1928, there remained unpaid under said contract remaining installments in the total sum of $150,000.00, which was due as follows: Installments of $7,500.00 each due respectively on the first day of March 1929, and on the first day of each third month thereafter, the last payment being due December 1, 1933.

12

The unpaid and uncollected installment obligations in the sum of $150,000.00, as described in Paragraph 11, outstanding at the date of the death of S. C. McEachern, were treated as an asset of said S. C. McEachern for Federal estate tax purposes and were included under Schedule C of the Federal Estate tax return filed on behalf of the Estate of S. C. McEachern at a value of $125,000.00.

13

The value of $125,000.00, at which said S. C. McEachern's interest in said unpaid and uncollected installment obligations at the time of his death was returned for estate tax purposes, was determined by deducting from the face amount of the then future installment payments a discount of approximately 6.348 per cent per annum from the date of the death of S. C. McEachern to the average due date of the installments.